IN THE MATTER OF THE CLAIM	*	BEFORE JEFFREY T. BROWN,
OF CALVIN PAYNE,	*	AN ADMINISTRATIVE LAW JUDGE
CLAIMANT	*	OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	*	OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF LUIS CRIOLLO,	*	
T/A LC CONSTRUCTION, LLC,	*	OAH No.: LABOR-HIC-02-22-01071
RESPONDENT	*	MHIC No.: 21 (75) 742

* * * * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE

On October 27, 2021, Calvin Payne (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of $22,267.45 for actual losses allegedly suffered as a result of a home improvement contract with Luis Criollo, trading as LC Construction, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015).[1] On

[1] Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

December 28, 2021, the MHIC issued a Hearing Order on the Claim. On January 4, 2022, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On June 22, 2022, I held a remote hearing via the Webex videoconferencing platform. Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)[(a)/(b). Hilary Baker, Assistant Attorney General, Department, represented the Fund. The Claimant represented himself. The Respondent represented himself.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; and COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?

2. If so, what is the amount of the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Claimant:

Clmt. Ex. 1 - Homeowner/Contractor Agreement (Contract), January 17, 2020

Clmt. Ex. 2 - LC Construction Proposal (Proposal) for the Claimant, January 17, 2020

Clmt. Ex. 3 - Photograph of rust in a bathtub, April 26, 2022[2]

Clmt. Ex. 4 - Photograph of a shower head fixture

Clmt. Ex. 5 - Photograph of exposed PVC pipes from a hole in the basement ceiling

Clmt. Ex. 6A - Photograph of a bathroom switch plate and wall

Clmt. Ex. 6B - Photograph of a bathroom light fixture and wall

[2] Unless otherwise specified, all photographs submitted as exhibits were taken on April 26, 2022.

Clmt. Ex. 7A - Photograph of living room ceiling damage

Clmt. Ex. 7B - Photograph of the living room

Clmt. Ex. 7C - Photograph of the dining room looking toward the living room

Clmt. Ex. 8A - Photograph of electrical components in the attic

Clmt. Ex. 8B - Photograph of electrical components in the attic

Clmt. Ex. 8C - Photograph of an electrical component in the attic

Clmt. Ex. 8D - Photograph of an electrical component in the attic

Clmt. Ex. 9 - Photograph of the kitchen

Clmt. Ex. 10A - Photograph of a cracked kitchen floor tile

Clmt. Ex. 10B - Photograph of a cracked kitchen floor tile

Clmt. Ex. 10C – Photograph of a cracked kitchen floor tile

Clmt. Ex. 10D - Photograph of missing grout in the kitchen floor

Clmt. Ex. 10E - Photograph of missing grout in the kitchen floor

Clmt. Ex. 10F – Photograph of missing grout in the kitchen floor

Clmt. Ex. 10G - Photograph of the kitchen floor

Clmt. Ex. 11A - Photograph of basement ceiling damage

Clmt. Ex. 11B - Photograph of the damaged kitchen subfloor from basement

Clmt. Ex. 11C - Photograph of the kitchen subfloor from basement

Clmt. Ex. 11D - Photograph of the demolished basement ceiling

Clmt. Ex. 12A - Photograph of a loose doorknob in the bedroom

Clmt. Ex. 12B - Photograph of a damaged bedroom door edge

Clmt. Ex. 12C - Photograph of a hallway closet door hinge and damaged doorframe

Clmt. Ex. 12D - Photograph of a hallway closet door hinge

Clmt. Ex. 12E - Photograph of a hallway closet door hinge

Clmt. Ex. 12F - Photograph of the split edge of a bathroom door

Clmt. Ex. 13A - Photograph of bedroom ceiling damage

Clmt. Ex. 13B - Photograph of bedroom ceiling damage

Clmt. Ex. 14A - Photograph of a bathroom ceiling fan fixture

Clmt. Ex. 14B - Photograph of a bathroom wall vent with rust

Clmt, Ex. 15 - General Contractor, LLC, estimate, October 20, 2021

Clmt. Ex. 16 - Elevations Group, LLC, estimate, October 18, 2021

Clmt. Ex. 17 - American Arbitration Association transactions receipts (2), July 2, 2021 and August 10, 2021

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 - Notice of Remote Hearing, January 28, 2022

Fund Ex. 2 - Hearing Order, December 28, 2021

Fund Ex. 3 - Notice to the Respondent from the MHIC advising of its receipt of the claim, with attached Home Improvement Claim Form, November 4, 2021

Fund Ex. 4 - MHIC Licensing Information for the Respondent, March 30, 2022

Fund Ex. 5 - Notice of Remote Prehearing Conference, April 4, 2022

Fund Ex. 6 - MHIC correspondence to the Respondent, April 1, 2022

The Respondent did not offer any exhibits.

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

The Fund did not present the testimony of any witnesses.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 5253633.[3]

2. On January 17, 2020,[4] the Claimant and the Respondent entered into a Contract requiring the Respondent to obtain electrical, plumbing and building permits, demolish certain portions of the interior of the Claimant's house, and provide remodeling services throughout the house.

3. The original agreed-upon Contract price was $ 25,000.00.

4. At all relevant times herein, the Claimant was party to a Federal Housing Administration (FHA) loan in the amount of $25,000.00 for the costs of materials and services specified in the Contract. The Respondent was required to repay the full amount of sums loaned to him by the FHA for renovation of his home.

5. The Contract price of $25,000.00 was fully paid to the Respondent.

6. The Contract stated that work would be completed within ninety days.

7. Work was performed by Richard Salazar, an employee of the Respondent, between January 2020 and June 2020.

8. The Claimant moved into the home in June of 2020 and immediately observed deficiencies in the work that had been performed to that point, and that significant amounts of work remained incomplete.

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[3] This was the Respondent's license number at the time the Contract was signed. On November 22, 2020, the Respondent was issued license number 5603349, which he retains to the present.

[4] The Contract is dated January 16, 2020 in the body of the contract, and was signed by the Claimant on that date, but it was signed by the Respondent on January 17, 2020.

9. The Claimant contacted Mr. Salazar through the WhatsApp message platform in June 2020 to address the deficiencies in workmanship to that time and have the Respondent complete the remaining work. The Claimant was informed by Mr. Salazar that he had traveled to his home country and was unable to return due to COVID-19. The Claimant attempted to further communicate with Mr. Salazar by this means, but Mr. Salazar stopped responding in July or August of 2020.

10. In September 2020, the Claimant contacted the Respondent to repair the deficiencies in workmanship to that time and complete the remaining work. The Respondent informed the Claimant that he was unable to attempt repairs or conduct further work under the Contract because he had no time due to other jobs.

11. No permits had been obtained by the Respondent for any work performed at the house by June 2020, including for demolition, remodeling, plumbing or electrical work.

12. The Respondent has not performed work under the Contract since June 2020.

13. The Contract required the parties to submit disputes to arbitration. The Claimant initiated arbitration twice in 2021, but the Respondent did not respond or cooperate in the arbitration process on either occasion. Because the Respondent did not cooperate, the Claimant was forced to abandon arbitration as a means of resolving the dispute.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2021); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor." Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) ("The Fund may only compensate claimants for actual losses . . . incurred as a result of misconduct by a licensed contractor."). "'[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Claimant produced the Proposal, prepared by the Respondent, which provided the scope of work that the Respondent was to have performed under the Contract. Clmt. Ex. 2. The Claimant testified that a condition of his FHA loan was that all permits for proposed work be obtained. The Respondent charged $500.00 to obtain permits but did not obtain any permits prior to or during the period when work was being performed. The Proposal made clear that plumbing work was required in the kitchen and upstairs bathroom, and that electrical work would be performed throughout the house. In addition, the Proposal itemized demolishing the kitchen, removing walls and ceilings throughout the first floor of the house, and replacing the ceilings and certain walls and structures on the first floor.

The Claimant testified with specificity as to the condition of the house as it has appeared since the Respondent last performed work. The Claimant explained that the Contract called for the upstairs bathroom to be fully demolished and replaced. He produced photographs showing, among other things, water accumulation in the new bathtub, which was not installed at a sufficient angle to allow it to drain, and that rust had formed due to the water pooling in the tub. He used photographs to depict the incomplete installation of plumbing fixtures in that bathroom. The Claimant demonstrated through his photographs that a shower fixture was left loose, and

testified that it leaked. He testified that drains backed up because the plumbing was installed incorrectly.

The Claimant testified that all electrical work performed by the Respondent was defective and had to be redone by an electrician. He was informed by an electrician that wiring in the bathroom was not done correctly and presented a fire hazard. He paid to have the electrical repairs done, but there are still holes in walls that were created to access the wiring, which need to be repaired. Similarly, he testified that recessed lights and light fixtures on the first floor of the house were installed incorrectly, and he presented photographs showing loose wires associated with recessed lighting installed by the Respondent lying on bare insulation in the ceiling space. Because no permit for electrical work was pulled, no municipal inspector ever inspected the work or determined that it complied with applicable code requirements.

The Claimant testified that the continuous ceiling in the living room and dining room was sagging and cracking, despite the Respondent having attempted to remedy this condition before work was last performed in June 2020. In the kitchen, the newly installed floor tiles had cracked in multiple places, as shown in pictures. The Claimant also showed, through photographs, that grout was incorrectly installed and was crumbling in some places and missing in others. He testified that when he walks on the floor he can hear it moving, and that he has observed that the floor is crumbling under the tiles. In addition, he testified that the tiles were installed before the cabinets and counter were installed, and that floor-level cabinets were then installed on top of the tiles. The Claimant explained that because of this, it will also be necessary to remove lower cabinets in order to replace the floor.

The Claimant demonstrated with pictures and testified that five new doors on the upper level of the house that replaced old doors were improperly installed. He testified that door

hinges and hardware were installed with mismatched screws, or into openings for hinges that were poorly cut, and that the doors were loose due to being incorrectly installed. Because of the way they are installed, the Claimant explained, they can no longer be tightened, and remain permanently loose. He also showed through the use of photographs that hardware on some doors was improperly installed and caused the doors to split along the narrow edge where the bolt is located.

The Claimant testified that when he spoke to the Respondent in September 2020, the Respondent said that he would continue to work if the Claimant provided additional funds. The Claimant also testified that he attempted to obtain the Respondent's cooperation and involvement in arbitration, but the Respondent simply ignored these efforts and would not respond.

Concerning the Claimant's actual damages, he testified that not everything done by the Respondent required repair or replacement, or remained incomplete. For instance, he testified that he was satisfied with the condition of the floors, as refinished by the Respondent. He also testified that he had already completed several repairs, paying for these out of his own funds, but he did not present receipts for these sums at the hearing. To more accurately assess the Claimant's actual damages, he was questioned by the Fund using the estimate from Elevations Group (Clmt. Ex. 16) (Elevations estimate), which included detailed and specific scope-of-work itemizations of components and costs that remained to be completed as of October 2021.

The Elevations estimate included a cost of $1,221.00 to remove and replace the recessed light fixtures in the living room. *See* Clmt. Ex. 16, p. 4. The Claimant testified that he has had this done for approximately $700.00 - $800.00, although he did not bring a receipt for this expense to the hearing. Similarly, the Elevations estimate specified a cost of $3,550.50 for work to be performed in "Room 4," which is a basement room beneath the first-floor bathroom. The

Claimant testified that the Elevations estimate included too many square feet of drywall to be replaced, and explained that the estimated cost of repair should only be for ceiling drywall covering a space which is half the square footage of the bathroom above it (56 square feet), meaning only 28 square feet. The Elevations estimate included 1,196.10 square feet of drywall, by comparison.

The Respondent testified that all of the deficiencies of workmanship were the fault of Mr. Salazar, but admitted that Mr. Salazar was his employee. Because Mr. Salazar was the only employee of the Respondent who had contact with the Claimant, the Respondent did not provide first-hand testimony concerning the work or the appearance of the Claimant's home in and after June 2020. He agreed that the Claimant contacted him about repairing and finishing the work, but denied telling him he would only do the work for more money. The Respondent did agree that he told the Claimant that he could not do any more work under the Contract because he had no time due to other jobs. He testified that he would still like to try to fix the work, but he knows that the Claimant does not want him to do so. He said that he could make the repairs if the Claimant allowed him to, and that he would pull all of the permits necessary to do the repairs.

Based on the preceding discussion, I find that the Respondent performed unworkmanlike, inadequate, and incomplete home improvements. I also find that the Respondent abandoned the project when neither Mr. Salazar nor any other representative of the Respondent returned to the house after June 2020. I thus find that the Claimant is eligible for compensation from the Fund.

Having found eligibility for compensation I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). MHIC's regulations

provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

The Respondent performed some work under the Contract, and the Claimant intends to retain other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss:

> If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(c).

The scope and specificity of the Elevations estimate makes it a reliable gauge of the amount the Claimant will be required to pay another contractor to repair the Respondent's poor work and complete the original contract. By comparison, the General Contractor, LLC estimate (Clmt. Ex. 15) provides fourteen categories of work to be performed and a total price of $19,760.00, but does not provide a separate cost for each of the fourteen categories specified. The Elevations estimate provides a total repair and replacement cost value of $22,267.45, with an itemization of each room, and the tasks and materials needed for each. Based on the Claimant's testimony, two of the itemized costs in the Elevations estimate must be reduced to reflect work that the Claimant has already completed or which is not necessary as a result of the Respondent's unworkmanlike, inadequate, and incomplete work.

I found the Claimant's testimony that he paid $700.00 to $800.00 to replace the living room recessed lights to be credible and reliable, especially when he could have remained silent

and been awarded $1,221.00 for the same repair. I will reduce the Elevations estimate for this work by $471.00, from $1,221.00 to $750.00.[5] I find it is reasonable to credit the Claimant with a sum he testified he paid which is considerably less than what he would otherwise be entitled to based on the undisputed Elevations estimate.

Similarly, I found the Claimant's testimony credible that the Elevations estimate includes unrelated drywall repair and replacement in the basement room. I find that the Claimant should receive credit for what he credibly testified is necessary to be done, even though more was estimated than is related to the Respondent's work. The Elevations estimate states that a total cost of $3,550.50 was necessary for 1,196 square feet of drywall replacement. If one divides $3,550.50 by 1,196, it can be determined that each square foot of drywall costs $2.97, including removal, replacement, and taxes. Multiplying $2.97 by 28 square feet leads to the total of $83.16 as the replacement cost of drywall in the basement. Thus, I will reduce the $3,550.50 estimate for drywall in the basement room by $3,467.34.

Using the Elevations estimate, the amount the Claimant has paid or must pay another contractor to repair or replace the Respondent's unworkmanlike, inadequate and incomplete work is calculated as follows:

Elevations estimate:	$22,647.45
Reduced by cost for light fixtures greater than $750.00	($471.00)
Reduced by cost for basement drywall greater than $83.16	($3,467.34)
	$18,709.11

[5] $1,221.00 - $471.00 = $750.00.

Applying this modified estimate of repair or replacement cost to the applicable formula, the Claimant's actual damages are calculated as follows:

Amount paid under the original contract:		$25,000.00
Amount the Claimant has paid or will pay:	+	$18,709.11
Original contract price:	-	$25,000.00
Claimant's actual loss:		$18,709.11

Effective July 1, 2022, a claimant's recovery is capped at $30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.[6] In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than $30,000.00. Therefore, the Claimant is entitled to recover his actual loss of $18,709.11.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $18,709.11 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(b). I further conclude that the Claimant is entitled to recover $18,709.11 from the Fund. *Id.*

RECOMMENDED ORDER

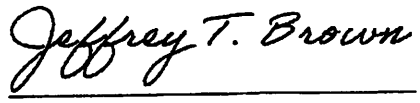
I **RECOMMEND** that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $18,709.11; and

[6] H.D. 917, 2022 Leg., 444th Sess. (Md. 2022) (to be codified in section 8-405(e)(1) of the Business Regulation Article). *See also* Bus. Reg. § 8-405(e)(5); COMAR 09.08.03.03B(4), D(2)(a). The increased cap is applicable to any claim on or after July 1, 2022, regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. *See Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;[7] and

ORDER that the records and publications of the Maryland Home Improvement Commission reflect this decision.



August 30, 2022
Date Decision Issued

Jeffrey T. Brown
Administrative Law Judge

JTB/dlm
#200376

[7] *See* Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 7th day of October, 2022, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.

I Jean White

I Jean White
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION